Restraints on alienability are little favored in law. GRAY, RESTRAINTS ON ALIENATION, § 113. And in England spendthrift trusts are under that ban. *ibid*, § 167j. The rule there is that a trust may be so limited that it shall not take effect unless the beneficiary is free from all debt, or that his estate shall cease upon his becoming insolvent, but the cestui que trust cannot hold and enjoy his interest entirely free from the claims of his creditors. POMEROY, EQUITY JURISPRUDENCE, (3d ed.), § 989. This was at one time the weight of authority in this country, but since the decision of *Nichols* v. *Eaton*, 91 U. S. 716, the current seems to have set in the other direction, and bequests are construed as spendthrift trusts where such are incapable of being seen with the naked eye. See 10 AM. L. REV. 591. Such a trust has been inferred from the fact that only the income was given and there was a trustee interposed. *Stambaugh's Estate*, 135 Pa. St. 586; PERRY, TRUSTS AND TRUSTEES, § 386a, note; POMEROY, EQ. JUR. (3d ed.) p. 1843, note. The fact that the father of these beneficiaries had been a profligate and a spendthrift, and had during his life squandered a large patrimony, seems to be the determining factor in this case, since the same court in regard to the same will had previously held that this was not a spendthrift trust. *Devin* v. *McCoy* (Ind. 1911), 93 N. E. 1013.

WILLS—ELECTION TO TAKE UNDER OR AGAINST A WILL—EFFECT IN ANOTHER STATE.—A wife in Illinois died there owning lands in that state and in Kansas. She left a will giving her husband a life estate in all of her property, after which it was to go to the other heirs in designated proportions. In Illinois the law gives the husband a life estate in one-third of the lands of which the wife died seised; in Kansas the husband is entitled to one-half of such lands in fee. The husband without making an express election in Illinois took possession of and enjoyed the rights conferred upon him by the will in the Illinois lands, but did nothing whatsoever in regard to the Kansas lands. Under the law in Illinois this was a valid election to take under the will as to the lands. *Held* that although under the law of Kansas the presumption is that a husband or wife in such a case elects to take under the law, nevertheless the election, made in Illinois, to take under the will was effective as to the Kansas lands. *Martin* v. *Battey* (Kan. 1912), 125 Pac. 88.

The court seems to assume that the question is one of interpretation, one of ascertaining the intention of the testator. This would be true if the issue were whether the devisee should take both under the will and also under the law. MINOR, CONFLICT OF LAWS, § 145, and such is the point of most of the cases cited, viz.; *Bolling* v. *Bolling*, 88 Va. 524; *Staigg* v. *Atkinson*, 144 Mass. 564; *Atkinson* v. *Staigg*, 13 R. I. 725. But it does not appear that any such contention was made, and it is submitted that the intention of the testator has nothing to do with the privilege of election but that such is allowed in direct opposition to the intention of the testator as expressed in the will. The right to oppose a will and defeat it is a qualification of testamentary power and hence governed by lex rei sitae. STORY, CONFLICT OF LAWS, § 474, § 479c. And it is well established that all questions as to the effect of the will are governed so far as it relates to real property by the lex rei sitae. I JARMAN,

WILLS 1; STORY, CONFLICT OF LAWS, 428; *U. S.* v. *Fox*, 94 U. S. 315; WHARTON, CONFLICT OF LAWS, 599c. The Mississippi cases cited here and by the authorities, *Garland* v. *Rowan*, 2 S. & M. 617; *Slaughter* v. *Garland*, 40 Miss. 172, and *Wilson* v. *Cox*, 49 Miss. 538 in support of the decision of this court dealt with personal property only, and the other cases cited are equally barren in furnishing authority for this decision. The reason for such a holding as this one has been given as one of convenience. MINOR, CONFLICT OF LAWS, 345. But it is submitted that since the will must be probated in each state and that in the probate only such portion is dealt with as concerns the real property lying in that state, allowing the testator to make one election in one state and another and different one in other states is no more inconvenient than ruling in such cases that the same election be made as was made in another jurisdiction. Some courts have gone so far as to hold that whether or not the devisee is put to an election in the particular case is to be determined by the lex rei sitae. *Jennings* v. *Jennings*, 21 Oh. St. 56, 77. And see *Hughes* v. *Hughes*, 14 La. Ann. 84 and *Re Lewis*, 32 La. Ann. 385.

WILLS—RULE IN SHELLEY'S CASE.—A will provided that at a certain time the rest and residue of the testator's estate should be sold and the proceeds divided among his heirs, except that the share of his son Fred should be paid to certain trustees and by them invested. The income therefrom was to be paid to the said Fred during life and at his death the principal was to be paid to "his heirs." And whether Fred was in of the remainder by force of the word "heirs" was the question. *Held*, that the word "heirs" was used as mere *descriptio personarum* and that the rule in Shelley's case did not apply. *Vogt* v. *Graff* (U. S. 1912) 32 S. Ct. 134.

Though the rule in Shelley's case is a rule of law, what the word "heir" means is a matter of construction in each particular case; *De Vaughn* v. *Hutchinson*, 165 U. S. 566. The rule being a maxim of legal policy, conversant with things and not with words, applies whenever judicial exposition determines that "heirs" are described, though informally, under a term correctly descriptive of other objects; but stands excluded whenever it determines that other objects are described, though informally, under the word "heirs." 1 HAYES, CONV. (5th Ed.) 543-4. Courts are much more liberal in construing the term "heirs" as being mere *descriptio personae* in the case of wills than they are in the case of deeds. 4 KENT, COMM. 216. That when the word "heirs" is used it is used in its technical sense is presumed; *Osborne* v. *Shrieve et al.*, 3 Mason 391. But very slight grounds are held to warrant the assumption that the testator intended not to use the word in its technical sense. And in this case the determining factor was that the testator treated the share in question in a different manner from the others. The others' shares were to be paid to them respectively at once, while Fred's share was limited to the income. In *Hall* v. *Gradwohl*, 113 Md. 293, 29 L. R. A. (N. S.) 954, the testator was held as intending to use the word "heirs" as *descriptio personae* because he made all the other devises directly but the one in the particular case was to be invested in stocks and the income to go to one and at his death the stock to be divided among his heirs.